

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

**ENERGY DIVISION**

**RESOLUTION E-3994**

**May 16, 2006**

**R E S O L U T I O N**

Resolution E--3994. Executive Director's order dismissing the protests by Mr. and Mrs. Lyman Pressey, the Group of East Harvey Avenue Residents (Tino and Susan Trujillo, George and Grace Rodriguez, Russ and Nickie Chin), Jim and Jean Bier, and Mr. Alfred Sebasto Jr. to the Pacific Gas and Electric Company (PG&E) claim of exemption from General Order 131-D permitting requirements for construction of the Airways Power Line and Substation in the City of Fresno. This Resolution approves PG&E's Advice Letter 2687-E.

By Advice Letter 2687-E. Filed on July 15, 2005.

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**SUMMARY**

This Resolution approves PG&E's Advice Letter 2687-E with an effective date of today. Pursuant to this advice letter, PG&E proposes to construct a new 115 kilovolt (kV) tubular steel pole line of roughly 3.4 miles in length with approximately 90 foot tall poles as part of the new Fancher Creek Project and to continue to provide reliable service to the Fresno Airport and Reagan Center areas of Fresno. The City of Fresno conducted an environmental review of the proposed installation of PG&E's facilities (Fancher Creek EIR No. 10133 - SCH No. 2004021071) and found no significant unavoidable environmental impacts associated with those facilities.

Several protestants filed protests to Advice Letter 2687-E, including: Jim and Jean Bier on July 25, 2005; Mr. and Mrs. Lyman Pressey on August 3, 2005; the "East Harvey Avenue residents" dated August 1, 2005, but transmitted late to the CPUC alone (and not to PG&E) by facsimile on August 5, 2005; and one additional late protest from Alfred Sebasto Jr. on August 19, 2005. The 20-day protest period for Advice Letter 2687-E closed on August 4, 2005. The protestants raised concerns in the following areas: precise pole locations; route alternatives; lack of project information; notice for the project; impacts to

property values; violation of "airspace" rights; interference with satellite reception; noise issues; EMF issues; "line sag" issues; interference with farming operations; and concerns regarding the conclusions of the City of Fresno's environmental review process pursuant to the Californian Environmental Quality Act.

The Commission's General Order (GO) 131-D governs the planning and construction of electric generation, transmission/power/distribution line facilities and substations. The project falls within and qualifies for the exemptions cited by PG&E. None of the concerns raised by the protestants fits within the specific exceptions to the exemptions of GO 131-D, nor do the protestants' claims support a claim of misapplication of an exemption by PG&E. Therefore, the protest is denied for failure to state a valid reason.

## **BACKGROUND**

Electric utilities proposing to relocate transmission lines must comply with GO 131-D which, among other things, provides for filing an application for a Permit to Construct unless the project is exempt for certain reasons specified in Section III.B. of the GO.

Section XIII of GO 131-D provides that any person or entity may protest a claim of exemption for one of two reasons: 1) that the utility incorrectly applied a GO 131-D exemption, or 2) that any of the conditions exist which are specified in the GO to render the exemption inapplicable. GO 131-D, Section III.B.2. states that an exemption shall not apply to a construction project when: 1) there is reasonable possibility that the activity may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped and officially adopted pursuant to law by federal, state, or local agencies; or 2) the cumulative impact of successive projects of the same type, in the same place, over time, is significant; or 3) there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances. If a timely protest is filed, construction shall not commence until the Executive Director has issued an Executive Resolution either requiring the utility to file an application for a Permit to Construct or dismissing the protest.

On July 15, 2005, PG&E filed Advice Letter 2687-E claiming an exemption from the requirements of GO 131-D for construction of the Airways Power Line and Substation in the City of Fresno. PG&E proposes to construct a new 115 kilovolt

(kV) tubular steel pole line of roughly 3.4 miles in length with approximately 90 foot tall poles as part of the new Fancher Creek Project and to continue to provide reliable service to the Fresno Airport and Reagan Center areas of Fresno. The City of Fresno conducted an environmental review of the proposed installation of PG&E's facilities (Fancher Creek EIR No. 10133 - SCH No. 2004021071) and found no significant unavoidable environmental impacts associated with those facilities.

PG&E claimed exemption from the requirement to file for a Permit to Construct, as prescribed by GO 131-D, Sections XI.B. and C. PG&E's claim of exemption was based on two Sections of the GO: Section III.B.1.(f), which exempts "power lines or substations to be relocated or constructed which have undergone environmental review pursuant to CEQA as part of a larger project, and for which the final CEQA document (Environmental Impact Report (EIR) or Negative Declaration) finds no significant unavoidable environmental impacts caused by the proposed line or substation."

The 20-day protest period for Advice Letter 2687-E closed on August 4, 2005. Protests to Advice Letter 2687-E were received from the following: Jim and Jean Bier on July 25, 2005; Mr. and Mrs. Lyman Pressey on August 3, 2005; the "East Harvey Avenue residents" dated August 1, 2005, but transmitted late to the CPUC alone (and not to PG&E) by facsimile on August 5, 2005; and one additional late protest from Alfred Sebasto Jr. on August 19, 2005.

PG&E responded to the above protests respectively on August 3, 2005; August 17, 2005; and August 26, 2005, via letter to the Director of the Energy Division.

## **NOTICE**

PG&E distributed a Notice of Proposed Construction in accordance with Section XI.B. and C. of GO 131-D, including the filing and service of Advice Letter No. 2687-E in accordance with Section III of GO 96-A.

## **PROTESTS**

Several protestants filed protests to Advice Letter 2687-E, including: Jim and Jean Bier on July 25, 2005; Mr. and Mrs. Lyman Pressey on August 3, 2005; the "East Harvey Avenue residents" dated August 1, 2005, but transmitted late to the CPUC alone (and not to PG&E) by facsimile on August 5, 2005; and one

additional late protest from Alfred Sebasto Jr. on August 19, 2005. The 20-day protest period for Advice Letter 2687-E closed on August 4, 2005. The protestants raised concerns in the following areas: precise pole locations; route alternatives; lack of project information; notice for the project; impacts to property values; violation of "airspace" rights; interference with satellite reception; noise issues; EMF issues; "line sag" issues; interference with farming operations; and concerns regarding the conclusions of the City of Fresno's environmental review process pursuant to the Californian Environmental Quality Act.

PG&E responded to the protests of Advice Letter 2687-E on August 3, 17, and 26, 2005. PG&E's response argues that the protests should be dismissed because none of the protestants' arguments are relevant to any issue that may properly be raised in a protest pursuant to GO 131-D, Section XIII – i.e., that PG&E has either incorrectly applied for an exemption, or that one of the three special conditions outlined in GO 131-D Section III.B.2 exist. PG&E asserts that the protestants' arguments fail to address, much less establish, how the claimed exemption to GO 131-D fails to apply to the project outlined in Advice Letter 2687-E. PG&E asserts that the protestants have also failed to establish that the project area involves any "unusual circumstances" that would trigger any exception to an exemption as specified in GO 131-D Section III.B.2.

Furthermore, PG&E asserts that the protestants have provided no evidence to support the claims made in their protests. The protestants raised concerns in the following areas: precise pole locations; route alternatives; lack of project information; notice for the project; impacts to property values; violation of "airspace" rights; interference with satellite reception; noise issues; EMF issues; "line sag" issues; interference with farming operations; and concerns regarding the conclusions of the City of Fresno's environmental review process pursuant to the Californian Environmental Quality Act.

PG&E asserts that the protests fail to state a valid reason for denying PG&E's claim to an exemption from the requirements of GO 131-D for a Permit To Construct for this project. PG&E also asserts that the protestants fail to state why PG&E has incorrectly applied the exemptions from the permit requirements provided in Section III.B.1 of the GO. In summary, PG&E asserts that the protestants have failed to meet their burden of showing that PG&E's claim for exemptions from the permit requirements of GO 131-D are invalid and should therefore be dismissed for failure to state a valid reason.

## **DISCUSSION**

The protestants are concerned that PG&E's project will impact them in a variety of ways because of inadequate attention to precise pole locations; route alternatives; lack of project information; notice for the project; impacts to property values; violation of "airspace" rights; interference with satellite reception; noise issues; EMF issues; "line sag" issues; interference with farming operations; and concerns regarding the conclusions of the City of Fresno's environmental review process pursuant to the Californian Environmental Quality Act.

In its response to the protests, PG&E addressed each of the areas of concern expressed by the protestants. PG&E correctly argues that the Airways Power Line and Substation Project falls squarely within the context for an exemption from GO 131-D PTC requirements and does not broach the exceptions-to-exemptions clause specified in GO 131-D, Section III.B.2. Furthermore, PG&E correctly argues that the noticing requirements of GO 131-D, Section IX.B were properly followed by the Company for Advice Letter 2687-E. PG&E correctly argues that the Airways Power Line and Substation Project was fully and adequately reviewed by the City of Fresno pursuant to the California Environmental Quality Act in its Fancher Creek Environmental Impact Report No. 10133 (SCH No. 2004021071) which was certified by the City on May 17, 2005. The EIR included the PG&E facilities for the Airways Power Line and Substation Project as part of the larger Fancher Creek environmental review, and no significant unavoidable environmental impacts would result from the PG&E project.

With respect to impacts to property values, PG&E correctly notes that the alignment of the Airways project was chosen because it has the fewest potential adverse environmental impacts, none of which were deemed significant – and concerns about negative impacts to property values are both speculative and not a legitimate bases for sustaining a protest to a claimed exemption under GO 131-D. With respect to concerns regarding proper project information, pole locations, and impacts on agricultural activities, PG&E notes that the most current information available was shared with the protestants; as further information becomes available, PG&E will share that information with affected protestants and will work to avoid undue burdens or impacts upon them; and as any impacts to agricultural activities become better established, PG&E will seek to

appropriately compensate affected parties in the forums and venues wherein fair market values and/or condemnation are at issue. PG&E correctly notes that neither of these issues presents a valid reason for sustaining a protest to an Advice Letter under GO 131-D.

PG&E correctly notes in its responses to the protests that several route alignments were carefully reviewed by the City of Fresno in their EIR for the Fancher Creek Project, and not only were visual impacts and cumulative impacts reviewed in that document, but land use designations allowing Light Industrial activities in the project area are strictly within the City of Fresno's jurisdiction. The protestants' arguments make clear that they are generally opposed to the City of Fresno's plans for certain types of local development in the area and are not satisfied with the City's environmental review for such development, as in the Fancher Creek Project EIR. Indeed, two of the protestants (Mr. and Mrs. Pressey and the East Harvey Avenue Group) suggest alternative routes for the power line that would cross each other's properties. PG&E notes that the alignment selected by the City of Fresno primarily follows a natural alignment created by property lines, dirt roads and irrigation facilities along the rear of existing parcels, limiting frontage crossings to just two. In contrast, the protestants propose alignments that run close to a school, several wells, a greater number of residences, and that would require the removal of mature landscaping; or, in the alternative, alignments that would increase the number of homes and frontages impacted, require the removal of 51 palm trees, and pass closer to the Fresno Yosemite International Airport in a route that was rejected by the Airport Land Use Commission because of airspace restrictions.

In its response to the protests, PG&E stated that the protestants fail to raise a valid protest because they fail to provide a valid reason why PG&E should be required to apply for a Permit to Construct for the proposed project or why PG&E has incorrectly applied the claimed exemption from the PTC application requirement. PG&E appears to have correctly applied the exemption for obtaining a Permit to Construct set forth in GO-131D, Section III.B.1.(f).

PG&E followed the notification procedures required in GO 131-D for this project. The protestants have not shown that PG&E incorrectly applied a GO 131-D exemption. Nor have the protestants shown that any of the conditions specified in GO 131-D, Section III.2. exist. Because these are the only three valid reasons for sustaining a protest, the protest should be denied.

## **FINDINGS**

1. PG&E filed Advice Letter 2687-E on July 15, 2005.
2. PG&E proposes to construct a new 115 kilovolt (kV) tubular steel pole line of roughly 3.4 miles in length with approximately 90 foot tall poles as part of the new Fancher Creek Project and to continue to provide reliable service to the Fresno Airport and Reagan Center areas of Fresno.
3. The City of Fresno conducted an environmental review of the proposed installation of PG&E's facilities (Fancher Creek EIR No. 10133 - SCH No. 2004021071) and found no significant unavoidable environmental impacts associated with those facilities.
4. PG&E requests an exemption from a Permit to Construct, under GO 131-D, Section III.B.1.(f).
5. PG&E distributed a Notice of Proposed Construction in accordance with Section XI.B. and C. of GO 131-D, including the filing and service of Advice Letter No. 2687-E in accordance with Section III of GO 96-A.
6. Timely protests to Advice Letter 2687-E were received from Jim and Jean Bier on July 25, 2005; and Mr. and Mrs. Lyman Pressey on August 3, 2005.
7. Late protests were received from the "East Harvey Avenue residents" dated August 1, 2005 (transmitted to the CPUC and not to PG&E by facsimile on August 5, 2005) and from Alfred Sebasto Jr. on August 19, 2005.
8. The protestants raised concerns in the following areas: precise pole locations; route alternatives; lack of project information; notice for the project; impacts to property values; violation of "airspace" rights; interference with satellite reception; noise issues; EMF issues; "line sag" issues; interference with farming operations; and concerns regarding the conclusions of the City of Fresno's environmental review process pursuant to the Californian Environmental Quality Act.
9. PG&E responded to the protests to Advice Letter 2687-E on August 3, 2005; August 17, 2005; and August 26, 2005, via letter to the Director of the Energy Division. PG&E contends that the protests should be denied because they fail

to provide a valid reason why PG&E should be required to apply for a Permit to Construct for the proposed project or why PG&E has incorrectly applied the exemptions from the PTC application requirement provided for in GO 131-D.

10. PG&E followed the notification procedures required in GO 131-D for this project.
11. GO 131-D provides that any person or entity may protest a claim of exemption for one of two reasons: 1) that the utility incorrectly applied a GO 131-D exemption, or 2) that any of the conditions exist which are specified in the GO to render the exemption inapplicable.
12. The protestant has not shown PG&E incorrectly applied a GO 131-D exemption. Nor have the protestants shown that any of the conditions specified in GO 131-D Section III.B.2. exist to invalidate the claimed exemption.
13. PG&E has correctly applied for a GO 131-D exemption in Advice Letter 2687-E.

**THEREFORE IT IS ORDERED THAT:**

1. PG&E's Advice Letter No. 2687-E is approved.
2. The protests of Jim and Jean Bier, Mr. and Mrs. Lyman Pressey, the "East Harvey Avenue residents," and Alfred Sebasto Jr. are denied.

This Resolution is effective today.

I certify the foregoing under the authority of General Order 131-D. Dated May 16, 2006, at San Francisco, California.

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Steve Larson  
Executive Director